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DECISION



A. Harbert
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548 *GP*

FILE: B-188687

DATE: May 10, 1978

MATTER OF: Raymond A. Allen et al., Overtime for
General Services Administration Guards

DIGEST: Decision in Raymond A. Allen, B-188687
September 21, 1977, held that duty-free
break periods regularly taken by certain
employees should be aggregated to deter-
mine daily total of break-times to offset
against otherwise compensable overtime.
During rest breaks, unlike lunch breaks,
employee is in pay status and may not
generally absent himself from his place
of work. Thus, rest breaks may not be
used as an offset against otherwise com-
pensable overtime. Decision in Allen
dated September 21, 1977, is therefore
modified to prohibit use of rest breaks
for offset purposes.

This action constitutes a reconsideration of our decision in the
Matter of Raymond A. Allen et al., B-188687, September 21, 1977.
That decision considered the claims of certain Federal Protective
Service employees for overtime compensation for preliminary and post-
liminary activities in accordance with the holding by the Court of
Claims in Baylor v. United States, 198 Ct. Cl. 331 (1972).

The facts in this case are fully set forth in our previous de-
cision of September 21, 1977, concerning this matter, and need not
be reiterated here except as necessary. In that decision we stated
that definite amounts of duty-free breaktime may be aggregated for
setoff purposes. Thus, we held that two 15-minute break periods may
be aggregated to offset equal amounts of pre-shift and post-shift
overtime.

By a letter dated December 22, 1977, Mr. L. M. Pellerzi, General
Counsel of the American Federation of Government Employees, requests
that we reconsider our determination that such break periods may be
offset against otherwise compensable overtime. In particular,
Mr. Pellerzi distinguishes between "rest periods" and "lunch periods".
He contends that in Baylor, the Court of Claims used the concept of
breaktime to refer exclusively to lunch periods. Mr. Pellerzi

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concludes by requesting us to modify our decision in Allen to include rest periods in hours worked for the purpose of calculating compensable overtime.

Our recent decision in B-190011, December 30, 1977, considered the relationship between rest periods and lunch breaks. In that decision, we stated:

"It is clear from the foregoing statutory authorities and guidance, that there are significant differences between lunch breaks and rest periods. Essentially an employee is off duty and in a nonpay status during his authorized lunch period and is free to depart his place of work and generally use such time as he desires. On the other hand, an employee is in a pay status during authorized rest periods and may not generally absent himself from his place of work during such periods."

Further, 5 U.S.C. 301 vests department heads with administrative authority to prescribe regulations covering the conduct of his or her employees. We have held that such authority is sufficiently broad to empower a department head in his or her discretion to grant employees brief rest periods when such periods are determined to be beneficial or essential to the efficiency of the Federal service. B-190011, supra; B-166304, April 7, 1969. Our cases, therefore, clearly recognize the distinction to be drawn between rest periods and lunch breaks.

Our previous decision in Raymond A. Allen, held that duty-free break periods regularly taken by an employee should be aggregated to determine the daily total of breaktime which may be setoff against additional duty time. That decision did not, however, draw any distinction between rest breaks and breaks for meals. In view of the foregoing discussion, our decision in Allen requires clarification. Accordingly, to the extent that the break periods taken by the employees are rest periods, such breaks should not be used to offset against otherwise compensable overtime. Where, however, the break

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periods taken by the employees constitute breaks for meals, those breaks may be used for setoff purposes. Our previous decision concerning this matter is modified accordingly.

Atkinson
Deputy Comptroller General
of the United States